
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Gambler's CB & Ham Radio Sales & Service

Pinconning, Michigan

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File No. EB-05-DT-131

NAL/Acct. No. 200632360001

FRN: 0014 2684 94

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 31, 2006

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Gambler's CB & Ham Radio Sales & Service ("Gambler's") apparently willfully violated Section 302(b) of the Communications Act of 1934 as amended, ("Act")¹, and Section 2.803(a)(1) of the Commission's Rules (the "Rules")², by offering for sale non-certified Citizens Band ("CB") transceivers. We conclude, pursuant to Section 503(b) of the Act,³ that Gambler's is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On April 5, 2004, the FCC Enforcement Bureau's Detroit Field Office ("Detroit Office") received information that Gambler's was marketing illegal, non-FCC certified devices. Agents from the Detroit Office visited Gambler's in Pinconning, Michigan on April 9, 2004, and observed that Gambler's displayed and offered for sale non-certified CB transceivers marketed as ARS transmitters, including Galaxy models DX33HML and DX66V, which the Commission's Office of Engineering and Technology ("OET") previously had tested and determined to be non-certified CB transceivers. As a result of the inspection, the Detroit Office issued Gambler's a Citation on April 13, 2004 for marketing non-certified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.⁴ The

¹ 47 U.S.C. § 302(b).

² 47 C.F.R. § 2.803 (a)(1).

³ 47 U.S.C. § 503(b).

⁴ Citation issued to Gambler's C.B. & Ham Radio Sales and Services, Citation No. C200432360004, released April 13, 2004 ("Citation"). The Detroit Office also cited Gambler's for selling CB linear amplifiers, in violation of Sections 2.803(a) and 2.815(b) of the Rules. During subsequent visits to Gambler's store, FCC agents did not

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Citation specifically cited Galaxy models DX33HML and DX66V and warned Gambler's that future violations may subject Gambler's to substantial civil monetary forfeitures for each violation or each day of a continuing violation,⁵ seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.⁶

3. On April 30, 2004, the Detroit Office received a response from Gambler's attorney, which stated that "all of the radios in question are marketed as Amateur radios . . . and [a]s sold, operate only on the Amateur bands . . . [and] as such, these radios are governed by Part 97 . . . , [which] does not require type acceptance of Amateur radios."⁷ The letter further stated that "[w]e expect that your office will withdraw the notice of citation within 14 days from the date of this letter." The Detroit Office received a second letter from Gambler's attorney on May 10, 2004, stating that because "[w]e have not heard anything from your office in response to our letter of April 22, 2004. . . we assume you agree with our position that the radios in question are legal and that the FCC is withdrawing the citation."⁸

4. On May 17, 2004, the Detroit Office sent a letter to Gambler's attorney addressing the response to the Citation.⁹ The letter advised Gambler's that the devices referred to in the Citation are intended for use on CB as well as ARS frequencies because they have built-in design features which facilitate their operation on CB frequencies by the exercise of simple, end-user accessible modifications to the devices. Accordingly, the letter advised, such devices are considered CB transmitters pursuant to Section 95.603(c) of the Rules, irrespective of any labeling purporting the devices to be "Amateur Radio Transceivers." Gambler's attorney sent a third letter, dated May 22, 2004, stating his continued disagreement with the position set forth in the Citation.¹⁰

5. In response to a complaint that Gambler's continued to sell non-FCC certified CB transceivers, an agent from the Detroit Office visited Gambler's store on April 13, 2005 and found that the store displayed and offered for sale non-certified CB transceivers, including Galaxy Models DX-33HML and DX44V. OET previously had tested these models and determined them to be non-certified CB transceivers.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to

observe linear amplifiers being offered for sale.

⁵ See 47 C.F.R. § 1.80(b)(3).

⁶ See 47 U.S.C. §§ 501, 503(b), 510.

⁷ See Letter from Michael C. Olson, Counsel for Gambler's, to James A. Bridgewater, District Director, Federal Communications Commission, dated April 26, 2004.

⁸ See Letter from Michael C. Olson, Counsel for Gambler's, to James A. Bridgewater, District Director, Federal Communications Commission, dated May 7, 2004.

⁹ See Letter from James A. Bridgewater, District Director, Detroit Office, to Michael C. Olson, dated May 17, 2004.

¹⁰ See Letter from Michael C. Olson, Counsel for Gamblers, to James A. Bridgewater, District Director, Federal Communications Commission, dated May 22, 2004.

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comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹¹

7. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”¹² Section 2.803(a)(1) of the Rules provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission”¹³ CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.¹⁴ Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment.

8. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”¹⁵ Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).¹⁶ Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹⁷

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹² 47 U.S.C. § 302a(b).

¹³ 47 C.F.R. § 2.803(a)(1).

¹⁴ See 47 C.F.R. §§ 2.907, 2.927(a).

¹⁵ 47 C.F.R. § 95.603(c).

¹⁶ 47 C.F.R. § 95.655(a).

¹⁷ Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

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9. On April 9, 2004, agents from the Detroit Office observed that Gambler's offered for sale various non-certified CB transmitters, including Galaxy models DX33HML and DX66V, which had been tested and determined by OET to be non-certified CB transceivers. Although they were labeled as "amateur radios," the specified models of Galaxy transmitters are CB transmitters because each was designed to be easily modified by the end user to allow operation on CB frequencies. The Detroit Office issued a Citation to Gambler's on April 13, 2004, warning Gambler's that future violations would subject Gambler's to penalties, including civil monetary forfeitures. On April 13, 2005, an FCC agent observed Gambler's offer for sale non-certified CB transmitters, Galaxy Models DX33HML and DX44V.

10. Based on the evidence before us, we find that Gambler's apparently willfully violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules by offering for sale non-certified CB transceivers at its store in Pinconning, Michigan.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for the importation or marketing of unauthorized equipment is seven thousand dollars (\$7,000).¹⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Gambler's is apparently liable for a (\$7,000) forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Gambler's CB & Ham Radio Sales & Service is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²⁰

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Gambler's CB & Ham Radio Sales & Service, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and

¹⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁹ 47 U.S.C. § 503(b)(2)(D).

²⁰ 47 U.S.C. §§ 302(b), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 2.803(a)(1).

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account number 911-6106.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, MI 48335-1552, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²¹

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Gambler's CB & Ham Radio Sales & Service, at its address of record and to Gambler's counsel.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau

Cc: Law Office of Michael C. Olson
4400 MacArthur Blvd.
Suite 230
Newport Beach, California 92660

²¹ See 47 C.F.R. § 1.1914.